
CHAPTER VIII

Funding and Reimbursement

In addition to all of the problems presented by water and shoreline cleanup operations, a shortage of funds and confusion about procedures and authorities made it difficult for the Corps of Engineers and other federal agencies to obtain reimbursement for their expenditures. When the spill occurred, officials in HQUSACE grappled with two difficult questions: Did the Corps have the authority to commit resources to the cleanup effort? If so, what was that authority and could the Corps expect to be reimbursed for its expenditures? It was clear that the Corps of Engineers had no authority to act unilaterally and spend military or civil funds on the oil spill cleanup. Under the Federal Water Pollution Control Act (33 USC 1321), also known as the Clean Water Act, the Department of Transportation, specifically the Coast Guard, was responsible for the cleanup and had the authority to request resources from other federal agencies.

Some Corps officials assumed that the Economy Act supplied the authority to provide support to the Coast Guard and that the Clean Water Act would be the vehicle for reimbursement. The Chief Counsel for the Corps of Engineers, Lester Edelman, however, maintained that the Clean Water Act, which he had helped draft in the 1970s, alone provided enough authority. The DOMS invoked the Economy Act, informing the Coast Guard, "It is our understanding under the national contingency plan, authority to provide military support to the Coast Guard (or to DOT) is provided for by the Economy Act, 31 USC Sect. 1535."¹

The Economy Act allows one federal agency to provide services and goods to another and to be reimbursed, based on a signed agreement or order. In the case of the oil spill, however, the Department of Transportation had not made such an agreement with the Defense Department and the Corps of Engineers.

The Clean Water Act stipulates that the spiller is liable for all cleanup costs and costs of restoration or replacement of natural resources damaged or destroyed as a result of the discharge of oil. Exxon accepted this liability. Section 311(k) of the Clean Water Act established a revolving fund in the U.S. Treasury to be maintained at the level of \$35 million to carry out the provisions of the Clean Water Act. The 311(k) account is funded mainly from appropriations, with the spiller reimbursing the federal government for the agency costs. The Coast Guard administers the fund and is responsible for recovering the costs on behalf of the federal government. It has the authority and responsibility to determine which agency costs were “reasonable” except where an agency’s actual costs had to be reimbursed under some other law. Coast Guard regulations require that the Federal On-Scene Coordinator preapprove activities stemming from the spill in order to be reimbursed.

In the case of the *Exxon Valdez* spill, agencies submitted their costs to the Coast Guard for approval, and the Coast Guard passed the approved costs on to Exxon. Exxon was expected to reimburse the 311(k) account for amounts approved by the Coast Guard, and the Coast Guard would then reimburse the agencies from the 311(k) account for the submitted and approved costs. Initially federal officials were not sure that Exxon would pay into the revolving 311(k) fund, and without the fund, the Secretary of Transportation might not have had sufficient funds to write an Economy Act order to the Defense Department. The account was badly depleted at the time of the spill. The Economy Act worked only if there was money going into the 311(k) account. Despite the fact that there was no Economy Act order, no formal guarantee of reimbursement, Corps officials were determined to commit resources.²

The Coast Guard began using the Clean Water Act reimbursement process after the spill because, although Exxon remained in charge, federal involvement was substantial and from the outset Exxon had been paying the cleanup costs. Moreover, the 311(k) account was an existing and readily accessible fund that the Coast Guard had authority to administer. The Coast Guard notified agencies that would be involved in the cleanup to prepare “sufficient, complete, and correct” reports for all cleanup costs.³

One of the Corps' first tasks was to establish procedures for recording and reporting costs. On 8 April E. Scott Chronister, Executive Director, Resource Management, HQUSACE, recommended that all Corps staff members, command-wide, keep careful records of all labor time spent on the Alaska oil spill cleanup project, as well as records of travel orders, purchase orders, and any other relevant financial documents. When it completed its efforts, Chronister emphasized, the Corps would need "clear, accurate, unambiguous financial information" in order to respond to all questions about costs and to seek reimbursement.⁴

Resource Management set up three categories for recording costs: dredge operations, including logistical and administrative support; other support to JTF, including laboratory operations; and command operations, including the emergency operations centers. The first category included the cost of the dredges plus any logistical and administrative support to them. The second covered on-site miscellaneous logistical support to the JTF and Alaska District and eventually Corps laboratory involvement. JTF officials later indicated that they wanted an object class breakdown (i.e., personnel costs, supplies, equipment, travel). They also wanted military costs separated out and a listing of the accounts to which the Corps would charge them.

Pending resolution of the funding issue, the Corps used the Civil Works Revolving Fund to pay for the dredge and the laboratory costs. It charged the direct costs of the Alaska District EOC to Flood Control and Coastal Emergencies and the cost of regular command and control activities at headquarters and North Pacific Division to General Expenses. Costs that did not fit any of these categories were put in a deferred account.⁵

Meanwhile, anxious officials in Alaska District waited for funding guidance. On 11 April Lieutenant Colonel Roy Carlson, Chief of Alaska District's Crisis Management Team, reported that the District's funding was "at a critical stage." "We will continue to perform our mission to the extent possible," he added, "however, an urgent requirement exists for funding guidance." By 19 April the costs for the District's EOC operations, support to the DOMS team, and coordination with the Joint Task Force had reached \$1,105,000.⁶

On 13 April DOMS reminded all DOD activities to capture and record all Alaska oil spill cleanup costs, including both fixed costs such as salaries at standard rates as well as variable costs. General McInerney planned to establish procedures to ensure that bills were submitted to the Coast Guard in a timely manner and with adequate documentation. All bills had to be based on statements of expenses that were validated and approved by the FOSC.

In a 20 April memorandum, Secretary Marsh urged Secretary Cheney to resolve the funding issue with Secretary Skinner. Marsh observed that the only authority available to DOD for its support was the Economy Act and that the Transportation Department was reluctant to enter into an Economy Act arrangement because it might not have enough funds to cover projected obligations. DOT, he added, had at least three sources of funding: its own regular appropriations, the 311(k) account, and another fund authorized by the Trans-Alaska Pipeline Authorization Act (TAPAA). DOT believed the 311(k) funds should be used only for certain directed expenses. Marsh received no reply.⁷

The Corps activated emergency operations centers, outfitted two dredges and sent them to Alaska, and took other actions in HQUSACE, North Pacific Division, various Districts, and Corps laboratories. It had received three written taskers from DOMS: one for each of the dredges and one for CRREL. The Corps' claims for reimbursement provoked controversy. Exxon and Coast Guard officials contended that they had not requested the *Yaquina* initially. Although the 11 April DOMS tasker for the *Yaquina* said "the Coast Guard has requested" and "report to the Coast Guard for reimbursement," Coast Guard officials claimed that they had not asked for the dredge and that Exxon did not want it. The Corps activated the dredge on 11 April, but the Coast Guard did not officially approve its use until 18 April, so the costs for that period were disputed.

Questions also arose about reimbursement for Corps laboratory activity because the Coast Guard had not requested laboratory involvement. The DOMS request for CRREL's involvement differed from the other taskers. It did not say "the Coast Guard requests" or provide an account number. Thus, when the Corps received the tasker, Resource Management

officials informed DOMS that they would treat the tasker as a reimbursable order. They also requested billing instructions from DOMS and sent an initial cost estimate, but DOMS did not respond. Initially the Corps billed only for dredge costs; later it billed for all costs. The Corps' negotiating position was to claim full reimbursement for all dredge and laboratory costs, which amounted to roughly \$11 million, including the cost of hiring dredges to complete the work that the *Yaquina* and *Essayons* had been scheduled to do before they were diverted to Alaska.⁸

At a meeting at Elmendorf AFB on 25 April, Coast Guard Captain Anderson indicated that Exxon had agreed to pay the "incremental" costs of the Army, including Corps of Engineers dredges, and the Air Force. Costs such as military salaries that are funded by other appropriations would not be reimbursed. Corps representatives gave Anderson the estimated rental rates for the dredges (fourteen days of *Yaquina* at \$23,000 a day for a total of \$322,000 and nine days for the *Essayons* at \$51,500 a day for a total of \$463,500). Additional costs such as labor, equipment, and supplies brought the total to \$436,687 for the *Yaquina* and \$602,732 for the *Essayons*. The estimated cost of demobilization for the dredges was \$238,000 and \$509,000. Thus the total costs would be \$674,687 for the *Yaquina* and \$1,111,732 for the *Essayons*.

One Corps official observed that Anderson "appeared reluctant to authorize payment of the expenses." Anderson argued that the Army, not the Coast Guard, had requested the services of the dredges (despite the DOMS taskers) and implied that the Corps should look to the Army for reimbursement if Exxon refused to pay.⁹

As the reimbursement problems dragged on, Corps headquarters once again directed the field offices to keep accurate records of oil spill cleanup costs. HQUSACE also provided the following general guidance on costs: JTF taskers and similar orders from the Coast Guard and the Transportation Department would be considered reimbursable; activities on the Corps' own initiative were chargeable to appropriations currently available to the Corps; and costs could be reallocated pending legal and fiscal determinations at Army headquarters and JTF.¹⁰

By 15 May the Defense Department and the services had spent approximately \$15 million, using their Operations and

Maintenance funds to pay for their cleanup efforts. DOD now requested that the Coast Guard begin reimbursement from the 311(k) account in compliance with the Economy Act.

In early August the Corps submitted a bill for \$9,730,000, which included dredging operations (\$7,500,000), alternative dredging costs (\$1,955,000), and other support to JTF including laboratory operations (\$275,000). The actual costs through 14 July totaled \$10,045,967, and John F. Wallace, Director of Resource Management, HQUSACE, projected \$479,033 more through 1 October. So the total estimated costs were \$10,525,000. The amount on the bill represented the minimum amount that the Corps required to protect the integrity of its civil works accounts.¹¹ Captain Anderson suggested that the Corps negotiate a dollar amount for reimbursement for the dredges rather than require the entire \$7,500,000 in light of the fact that "Exxon requested skimmers not dredges and the dredges did not perform at the level the Corps had promised."¹² Exxon wanted to reimburse the Corps at the lower rate for skimmers rather than at the dredge rates that the Corps quoted.

The Corps of Engineers was not the only federal agency with reimbursement problems. On 10 April Representative Earl Hutto, Chairman, Subcommittee on Readiness, House Committee on Armed Services, asked the General Accounting Office (GAO) to conduct a review of federal costs incurred as a result of the Alaska oil spill. The review would focus on the accounting systems and methods that federal agencies, including DOD, used to track the costs associated with the federal cleanup effort. GAO auditors went to Valdez a month later.

GAO auditors investigated what the various federal agencies had spent, whether the agencies had procedures to seek reimbursement from Exxon, and the extent to which they had been reimbursed. GAO's interim report, which was completed in January 1990, covered the estimated costs reported by agencies as of 30 September 1990 and reimbursements received through 15 November 1989.

Nine federal agencies had incurred costs — costs totaling \$125.2 million during this time period. Of this total, \$111.8 million was for the cleanup, \$12.3 million for damage assessment, and \$1.1 million for other costs resulting from

the spill. DOD incurred the greatest costs of any federal agency — \$62.8 million. DOT was second with costs totaling \$33.3 million. Seven of the nine federal agencies had sought reimbursement under Section 311(k) of the Clean Water Act; and three of the agencies established direct agreements with Exxon. Two of the three agencies also used the 311(k) process for costs not covered under direct agreements.

As of 15 November 1989 Exxon had reimbursed \$80.8 million of the \$125.2 million. The unreimbursed balance — \$44.4 million — included amounts that agencies were still processing and had not yet billed to Exxon or amounts that the Coast Guard and/or Exxon challenged. Recovery of half of the \$44.4 million (\$21.6 million) was uncertain. Either the Coast Guard or Exxon was questioning the allowability of \$17.8 million in costs, which included charges for the Corps of Engineers dredges “which Exxon considers excessive”; activities that the FOSC did not approve in advance; and costs for which the Coast Guard had requested more detailed documentation.

Department of Defense costs totaled \$62.8 million, of which Exxon had reimbursed \$41.5 million and \$4.6 million was still being processed. GAO indicated that the remaining costs, \$16.7 million, were either uncertain or had not been reimbursed. DOD payments that were uncertain included \$7.4 million, the cost of the two Corps dredges; \$1.8 million for MEDEVAC equipment and personnel; and \$0.4 million for Air Force telecommunication services used to coordinate DOD activities. Exxon disputed the \$7.4 million dredging cost because it wanted to pay skimmer rates rather than the higher dredging rates that the Corps charged. In addition, Coast Guard officials contended that the FOSC had not requested or authorized either the MEDEVAC services or the Air Force telecommunication services.¹³

The Corps committed resources before its authority to do so was clearly defined and before a proper mechanism for reimbursement was in place. The uncertainties about authorities and funding procedures created reimbursement problems for the Corps and for other agencies that have not yet been fully resolved.